



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

Robert L. Morgan
State Engineer

1636 West North Temple, Suite 220
Salt Lake City, UT 84116-3156
801-538-7240
801-538-7467 (Fax)

March 18, 1994

Daniel Kingston, President
West Deep Creek Irrigation Company
P. O. Box 6045
Ibapah, UT 84034

Kraig Higginson
Last Chance Ranch
890 Quail Valley Drive
Provo, UT 84064

RE: Distribution of waters of Deep Creek

Gentlemen:

On February 18, 1994, at the request of owners of the Last Chance Ranch, representatives of the Division of Water Rights made an inspection of the Deep Creek area to determine the status of the diversions and measuring devices. Concerns have been voiced that diversion practices on Deep Creek by upstream individuals are impairing the rights of the owners of the Last Chance Ranch.

Our investigation revealed that there are no measuring devices on any of the diversions from the creek and, except in one instance, there are no control structures. At each point of our inspection, we observed the diversions flowing full. It appears the diversions generally are not controlled and water is diverted almost year round. It is also evident that dikes have been constructed at the lower end of the stream which impedes the flow of the stream to the Last Chance Ranch. At the time of our inspection, we observed wide areas above the dikes where the water had backed up and was frozen. Additional stream channel losses could result from this practice above those which would occur if the stream remained in its natural channel.

The water rights on Deep Creek which include irrigation are as follows:

WEST DEEP CREEK IRRIGATION & POWER CO

1880	17-33	DEC	30 ac. Pri., 82 ac. Sec., 215 stock, 1 fam.
1880	17-34	DEC	201.50 ac, 370 stock, 1 family
1880	17-35	DEC	75.50 ac, 370 stock, 1 family

The period of use for all uses on 34 and 35 is 4/1 to 10/31
Claims 34 and 35 are limited to the irrigation requirements of
93 acres of primary water and 121 acres of secondary water.

1880	17-36	DEC	3.5 cfs	59.00 ac, 420 stock, 1 family
------	-------	-----	---------	-------------------------------

Deep Creek Distribution
March 18, 1994
Page - 2 -

1880	17-37	DEC	3.5 cfs	270.50 ac, 420 stock, 1 family
1880	17-38	DEC	3.5 cfs	113.20 ac, 420 stock, 1 family
1880	17-39	DEC	3.5 cfs	44.20 ac, 420 stock, 1 family

The period of use for all uses on 36 to 39 is 4/1 to 10/31
The same flow is intermittently diverted by 36, 37, 38, 39
Claims 36, 37, 38, & 39 are limited to the irrigation requirements of 233 acres of primary water and 173 acres of secondary water.

1880	17-40	DEC	.33 cfs	102.80 ac, 215 stock, 1 family
1880	17-41	DEC	.33 cfs	81.10 ac, 215 stock, 1 family

The period of use for all uses on 40 & 41 is 4/1 to 10/31
The same flow is intermittently diverted by 40 & 41
Claims 40 & 41 are limited to the irrigation requirements of 40 ac of primary water and 20 ac of secondary water from 4/1 to 10/31 and 25 acres of secondary water from 9/15 to 6/1.

1880	17-42	DEC	0.5 cfs	181.90 ac, 370 stock, 1 family
1880	17-43	DEC	0.5 cfs	487.90 ac, 370 stock, 1 family

The period of use for all uses on 42 & 43 is 4/1 to 10/31
The same flow is intermittently diverted by 42 & 43
Claims 42 & 43 are limited to the irrigation requirements of 32 ac of primary water and 608 ac of secondary water.

1893	17-44	DIL		114.80 ac, 380 stock, 1 family
1893	17-45	DIL		265.50 ac, 380 stock, 1 family
1894	17-32	DIL		71.2 acres

LAST CHANCE RANCH

L.L. Christensen:

1903	17-149	DIL	10.0 cfs	640.00 ac, 150 stock
	Sole supply for 300 acres			
	Irrigation use 4/1 to 10/31			
	Stockwatering use 1/1 to 10/31			
	Storage in Deep Creek Reservoir 1/1 to 12/31			

1909	17-2	CERT	5.0 cfs	640.00 ac
	Sole supply for 164 acres			
	Irrigation use 3/1 to 7/31			
	Storage of 225 af in Deep Creek Reservoir 1/1 to 12/31			

Kraig Higginson:

Deep Creek Distribution
March 18, 1994
Page - 3 -

1974 17-165 WUCS 500 af 640.00 ac, 150 stock
 Irrigation use 4/1 to 10/31
 Stockwatering use 1/1 to 12/31
 Storage in Deep Creek Reservoir 1/1 to 12/31

1978 17-157 WUCS 500 af 640.00 ac, 150 stock
 Irrigation use 4/1 to 10/31
 Stockwatering use 1/1 to 12/31
 Storage in Deep Creek Reservoir 11/1 to 7/1

(Rights 17-2, 149, 165, and 157 are supplemental for irrigation.)

OTHER IRRIGATION RIGHTS ON DEEP CREEK

17- 9	1880	F. F. Snively
17- 10	1880	F. F. Snively
17- 11	1880	F. F. Snively
17- 14	1893	George & Joyce Cook
17- 27	1880	Mary S. Lee
17- 28	1880	Mary S. Lee
17- 49	1880	Mary S. Lee
17- 51	1881	Arthur E. Kelly
17- 54	1880	Audrey Cook
17- 59	1893	George & Joyce Cook
17- 63	1880	F. F. Snively
17- 67	1880	F. F. Snively
17- 70	1880	F. F. Snively
17-112	1898	Rao & Phyllis Bateman
17-113	1898	Charles & Blance Bean
17-130	1880	F. F. Snively
17-141	1880	Audrey Cook

As shown above, the rights of the West Deep Creek Irrigation Company are among the earliest in priority on Deep Creek. It appears that under those rights, the company is to divert a total of 4.33 cfs from April 1 to October 31 for irrigation, 0.33 cfs from September 15 to June 1 for irrigation, and only sufficient water for livestock watering and domestic needs from November 1 to March 31. Any flows in excess of these amounts must be allowed to flow downstream unimpeded to meet the storage and irrigation rights associated with the Last Chance Ranch. The Last Chance rights allow the diversion of up to 15 cfs for irrigation or storage.

It appears that there is a need for regulation of the upstream diversions on Deep Creek to ensure that water is distributed according to the water rights. If those rights are to be properly administered, adequate head gates and measuring devices will be needed to ensure the water is distributed properly. Section 73-5-4 of the Utah Code Annotated, 1953 as amended, states in part:

Deep Creek Distribution

March 18, 1994

Page - 4 -

"Every person using water in this state shall construct or install and maintain a substantial headgate, cap, valve or other controlling works, weir, flume and measuring device at each point where water is diverted or turned out, for the purpose of regulating and measuring the quantity of water that may be used. ... If the owner of irrigation works, canals, reservoirs, wells, pumps or tunnels shall refuse or neglect to construct such headgates, caps, valves flumes or measuring devices after thirty days notice to do so by the state engineer, the state engineer may forbid the use of water until the user thereof shall comply with this requirement."

The state engineer is not anxious to require that the water right holders on Deep Creek incur the expense to install headgates and measuring devices on each of their respective diversions. However, it appears that these devices are necessary to adequately distribute the water. It would be a much better solution for the water users to voluntarily install them and then regulate themselves to make sure that everyone is treated fairly. If the water users can not regulate themselves, the state engineer may need to organize a distribution system on Deep Creek, appoint a commissioner to control diversions, and issue a notice requiring headgates and measuring devices, all of which will result in expense to the water users. The water users on Deep Creek (the irrigation company, Last Chance Ranch and any other users) would be assessed annually to meet the expenses of the distribution system.

We would encourage you to resolve this situation without formal intervention by the state engineer. We would be glad to assist you in this effort. If another meeting of the water users would be helpful, we would be glad to meet to discuss the opportunities for solving the problem.

Sincerely,



Lee H. Sim, P.E.
Assistant State Engineer
for Distribution

cc: John Mann, Regional Engineer

Jody Williams
50 West Broadway, Eighth Floor
Salt Lake City, UT 84101

ANALYSIS OF IRRIGATION RIGHTS
MERRIT DECREE
Dated May 2, 1894

WATER USER	DATE	MAIN DEEP CR		WEST DEEP CR		MIDDLE DEEP CR		EAST DEEP CR	
		PRIM.	SEC.	PRIM.	SEC.	PRIM.	SEC.	PRIM.	SEC.
ELIZ. BONNEMORT plus all waste waters of Main Deep Creek	1880	32ac	128ac						
FRANCIS LYMAN	1880			31ac	82ac	158ac * 26ac	71ac	12ac * 26ac	67ac
EDGAR BONNEMORT	1886		480ac						
JAMES WEAVER	1880			15ac	25ac				
E. R. FERGUSON	1880					65ac	43ac		
JOHN C. DEVINE	1880					110ac	120ac	28ac	10ac
CHARLES FELT	1880				75ac	52ac	27ac	41ac	26ac
FRANCIS GASH	1880								12ac
JENNIE HENDRY	1880			6ac	46ac				
HENRY GOLDSMITH	1880							55ac	115ac
Mrs. M.F. GASH	1880					40ac	70ac		
TOTAL		32ac	608ac	52ac	228ac	425ac * 26ac	331ac	136ac * 26ac	230ac

Total Primary rights - 671ac

Total Secondary rights - 1397ac

NOTES:

* 26ac shown is one parcel irrigated from both Middle and East Deep Creek

Primary rights are delivered before secondary rights

All primary rights to be supplied before any secondary rights are supplied

Primary rights have equal right to water, shortages are shared proportionately

Once primary rights are met, secondary rights have equal right to the

balance of the water, shortages are shared proportionately

When the water is not needed for useful and beneficial purposes it is to be

turned into the stream for the use of the other appropriators